

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.6643 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 : No

RAMESHKUMAR SAKHARAM PISHAL (MARATHI) .. Petitioner

Versus

COMMISSIONER OF POLICE .. Opponents

Appearance:

MR ANIL S DAVE for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 25/11/97

ORAL JUDGEMENT :

The petitioner at present is under detention pursuant to the detention order passed on 19th June 1997 by the Police Commissioner of the City of Ahmedabad invoking his powers under sec.3(2) of the Gujarat Prevention of Anti Social Activities Act (hereinafter referred to as "the Act"), by this application under Article 226 of the Constitution of India challenges the validity and legality of the order passed.

2. The facts leading to the present petition may be stated. Before Shahibagh Police Station, three complaints came to be lodged against the petitioner. As per the first complaint, he is alleged to have committed the offences punishable under sec.447, 379, 511 read with 114 of IPC. What is alleged while lodging the second complaint is that the petitioner committed the offence of theft punishable under sec.379. As per the averments made in the third complaint he is alleged to have committed likewise offences punishable under secs.454 and 380 of IPC. When such complaints came to be filed, the Police thought that the petitioner must have been involved in several types of anti social activities because often incidents of disturbance to the public order were occurring.

3. A detailed inquiry was then made. The Police found that the petitioner was the headstrong person and was a hard-core offender. He was committing several wrongs disturbing public order. The Police also found that the petitioner was the monster and the people had cultivated the feeling of insecurity because of fear of violence endangering their safety. No one was therefore, coming forward to make statement against him or lodge the complaint. Every one thought it wise to keep the lips tight and suffer the wrongs being done. To check his anti social activities the Police found that any action under general law sounding dull, would not be effective. The only way out to make the people feel free and maintain public order was to pass the impugned order and arrest the petitioner. In the result the order came to be passed and the petitioner, after being arrested pursuant to that order, is at present in custody. He has preferring this application to challenged the legality of the order.

4. The learned advocate representing the petitioner has assailed the order on different grounds. But during the course of his arguments, when a query was made he then tapered of his submission confining to the only point on which the whole of the application can be disposed of as the said point goes to the root of the case. According to him even if the facts as alleged are accepted the case on hand would not fall within the ambits of the expression 'public order', for the complaints lodged, the petitioner can well be dealt with under the general law, and so this would be a matter falling within the domain of "law and order".

5. When likewise point was raised before the Supreme

Court in the case of Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police & others, XXXVI(2) [1995(2)] GLR 1268, it is held that for the purpose of sec.3 of the Act a person is deemed to be acting in any manner prejudicial to the maintenance of public order, when such a person is dangerous person and engaged in the activities which adversely affect or likely to affect adversely the maintenance of public order. It is, therefore, necessary to determine whether besides the person being dangerous person his alleged activities fall within the ambits of the expression 'public order'. A distinction has to be drawn between 'law and order' and 'maintenance of public order' because most often these two expressions are confused and the detention orders are passed by the concerned authority in respect of the activities of the person which would exclusively fall within the ambit of "law and order" and not within the expression 'public order'. If the case be dealt with under the general law, it would be a matter not of the public order, but law and order. In case on hand the activities, namely, aforesaid criminal wrongs noted by the Police would not be a challenge to the maintenance of public order.

6. The respondents in this case merely based their conclusion on the basis of the above referred three complaints lodged with Shahibagh Police Station. Those complaints relate to offences of theft, but that fact will not bring out the case from the ambits of "law and order". The cases of theft can well be dealt with under general law, in all respects effective and having deterrent effect. The matter on hand would, therefore, fall within the ambits of 'law and order' and not within the expression 'public order'. The eduction of detailed inquiry made is not brought on record with necessary materials. When that is so as per the above stated decision of the Supreme Court, the activities of the petitioner will fall within the expression "public order". One of the requirements to pass the order is, therefore, wanting in the present case. The detention order, therefore, cannot be held legal. Consequently, it is required to be quashed.

7. For the reasons stated above the order of detention being illegal is hereby quashed and set aside, and the petitioner is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly.

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